

Appl. No. : 10/692,243
Filed : October 22, 2003

REMARKS

Claims 8-11 are pending in this application and Claim 8 stands rejected on the basis of statutory double patenting. In the Final Office Action the Examiner upheld this rejection, finding that Claim 8 is directed to the same invention as that of Claim 20 of U.S. Patent No. 5,916,365 ("the '365 patent").

In interviews on February 17 and March 16, 2006, the difference between the terms "removing" in Claim 8 of the present application and Claim 20 of the '365 patent were discussed. In particular, Applicants representative pointed out that the term "evacuating" in the '365 patent had been previously construed by the Federal Circuit in *ASM America, Inc v. Genus, Inc.* (401 F.3d 1340, 74 U.S.P.Q. 2d 1211 (Fed. Cir. 2005)) in such a way that it is not equivalent to the term "removing."

As a result of the discussions, the Examiner took the position that while he is free to interpret the term "removing" in the present application broadly, he is constrained by the Federal Circuit's interpretation of the term "evacuating" in the '365 application. With this in mind, the Examiner agreed that the terms are not equivalent and that the statutory double patenting rejection should be withdrawn. Applicants agreed to file this paper summarizing the interviews for the record.

Claims 9-11 were previously found to be allowable. Accordingly the only outstanding rejection has been overcome and the Application is believed to be in condition for allowance. If any issues remain, the Examiner is invited to contact Applicant's representative at the number provided below in order to resolve such issues promptly.

Respectfully submitted,

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